

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

**IN RE:**

**SUPERIOR OFFSHORE  
INTERNATIONAL, INC.,**

**Debtor.**

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§  
§  
§  
§

**Case No. 08-32590-H2-11  
(Chapter 11)**

**MOTION FOR AN ORDER OF CIVIL CONTEMPT  
AGAINST TRIUMPH MARINE, INC. AND ROBERT S. REICH**

**THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.**

**To the Honorable Marvin Isgur,  
Chief United States Bankruptcy Judge:**

H. Malcolm Lovett, Jr. (the "Plan Agent"), the plan agent under the confirmed plan of liquidation (the "Plan"), files this motion for an order of civil contempt against Triumph Marine, Inc. and Robert S. Reich.

**Nature of the Motion**

1. With full knowledge of these bankruptcy proceedings and despite multiple warnings, Triumph Marine, Inc. ("Triumph") and its counsel, Robert S. Reich ("Reich"), continue to prosecute prepetition claims against the Debtor in direct violation of the injunctions contained in the Plan and confirmation order. Triumph's and Reich's actions are willful and

reflect a wonton disregard for this Court's authority and applicable law. The Plan Agent requests that the Court enter an order (i) holding Triumph and Reich in civil contempt; (ii) ordering Triumph and Reich to immediately dismiss Triumph's lawsuit against the Debtor; and (iii) sanctioning Triumph and Reich, jointly and severally, for their conduct. Specifically, the Plan Agent seeks compensatory sanctions against Triumph and Reich as well as sanctions to deter them from similar future conduct.

### **Jurisdiction and Legal Authority**

2. This Court has jurisdiction over civil contempt proceedings under 28 U.S.C. § 157; 11 U.S.C. § 105 and FED. R. BANKR. P. 9020. *In re Terrebone Fuel and Lube*, 108 F.3d 609, 612-13 (5<sup>th</sup> Cir. 1997); *In re Abacus Broadcasting Corp.*, 150 B.R. 925, 928 (Bankr. W.D. Tex. 1993). A civil contempt proceeding is a core proceeding under 28 U.S.C. § 157(b)(2). *Kellogg v. Chester*, 71 B.R. 36, 38 (N.D. Tex. 1987). A court may impose sanctions in civil contempt proceedings to compensate a party for unnecessary injuries suffered and costs incurred because of the contemptuous conduct. *United States v. United Mine Workers*, 67 S.Ct. 677, 701 (1947); *Petroleos Mexicanos v. Crawford Enters., Inc.*, 826 F.2d. 392, 400 (5<sup>th</sup> Cir. 1987). A civil contempt proceeding is a core matter if it arises out of the violation of an order issued in a core proceeding. *In re Skinner*, 917 F.2d 444, 448 (10<sup>th</sup> Cir. 1990).

3. In a civil contempt proceeding, the moving party need only show (i) that a court order was in effect; (ii) the order required certain conduct by the respondent; and (iii) the respondent failed to comply with the court's order. *F.D.I.C. v. LeGrand*, 43 F.3d 163, 170 (5<sup>th</sup> Cir. 1995). A court may even order the incarceration of a non-complying person with the incarceration to terminate upon compliance with the court's order. *See In re Spanish River Plaza Realty Co., Ltd.*, 155 B.R. 249, 254 (Bankr. S.D. Fla. 1993).

**Relevant Background**

4. On April 24, 2008, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

5. On January 28, 2009, the Court entered its order confirming the Plan (the “Confirmation Order”). Article 11.2 of the Plan provides as follows:

Limited Discharge of Debtor and Injunction. The Confirmation Order will operate as a general resolution with prejudice, as of the Effective Date, of all pending legal proceedings, if any, against the Debtor and its assets and properties and any proceedings not yet instituted against the Debtor or its assets and properties, except as otherwise provided in the Plan. **Except as otherwise expressly provided in the Plan or the Confirmation Order, all Persons who have held, hold, or may hold Claims against the Debtor are permanently enjoined on and after the Effective Date from (a) commencing or continuing in any manner any action or other proceeding of any kind against the Debtor or the Liquidating Debtor, or their property, with respect to any such Claim, (b) the enforcement, attachment, collection or recovery by any manner or means of any judgment, award, decree or order with respect to any such Claim against the Debtor or the Liquidating Debtor, or their property, (c) creating, perfecting, or enforcing any encumbrance of any kind against the Debtor or the Liquidating Debtor, or their property, with respect to such Claim, (d) asserting any right of subrogation of any kind against any obligation due to the Debtor or the Liquidating Debtor, or the property of the Debtor, the Estate or the Liquidating Debtor with respect to any such Claim.** Unless otherwise provided in the Plan or by order of the Bankruptcy Court, all injunctions or automatic stays provided for in this case pursuant to § 105, if any, or § 362 of the Bankruptcy Code, or otherwise, and in existence on the Confirmation Date will remain in full force and effect until the Effective Date; and (e) asserting any right of setoff or recoupment against the Debtor, the Estate or the Liquidating Debtor.

6. The Court’s confirmation order binds Triumph and Reich to comply with the Plan’s provisions.

7. The Plan became effective on February 11, 2009.

8. On June 30, 2009, Reich filed a proof of claim [Claim No. 530] on behalf of Triumph for \$65,000.00. By operation of Article 8.5 of the Plan, the proof of claim was deemed disallowed. The Plan Agent sent a letter to Reich on July 23, 2009 notifying him of the claim’s

disallowance. Copies of the proof of claim and July 23, 2009 letter are attached as **Exhibits 1 and 2.**

9. Undeterred, Reich proceeded to file a complaint on behalf of Triumph against the Debtor in the United States District Court for the Eastern District of Louisiana on or around October 25, 2010, seeking to compel the Debtor to undertake to defend and indemnify Triumph for claims asserted by the Debtor's former employee related to a 2005 job injury (the "Louisiana Action"). A copy of the complaint is attached as **Exhibit 3.**

10. When the Plan Agent learned of the Louisiana Action, he sent a letter notifying Reich of the injunctions contained in the Plan and Confirmation Order and requesting that Triumph immediately cease prosecution of the lawsuit. A copy of the Plan Agent's November 17, 2010 letter is attached as **Exhibit 4.**

11. An attorney at Reich's office subsequently contacted the Plan Agent's counsel requesting that the Plan Agent waive service of the summons and complaint. The conversation was followed by a letter describing the nature of the Louisiana Action and requesting that the Plan Agent execute a waiver of service under Rule 4 and place the Debtor's "underwriters on notice." A copy of the Triumph's December 22, 2010 letter is attached as **Exhibit 5.**

12. On February 21, 2011, counsel for the Plan Agent notified Triumph's counsel that the Plan Agent was not willing to waive service under Rule 4 and that the prosecution of the Louisiana Action violated the injunctions contained in the Plan and Confirmation Order. A copy of the February 21, 2011 letter is attached as **Exhibit 6.**

13. On March 2, 2011, Reich sent a letter (dated March 1, 2011) acknowledging receipt of the February 21, 2011 letter and notifying counsel for the Plan Agent that he intended to proceed with serving the Plan Agent in violation of the Plan injunctions. A copy of the March 2, 2011 letter is attached as **Exhibit 7.**

14. Upon receipt of the March 2 letter, counsel for the Plan Agent immediately notified Reich—*once again*—that his/Triumph's actions violated the Plan injunctions and warning that the Plan Agent would seek his fees and costs incurred in connection with enforcing the terms of the Plan. A copy of the March 2, 2011 email to Reich is attached as **Exhibit 8**.

15. On March 4, 2011, Reich served the Plan Agent with Triumph's complaint. Copies of the complaint and summons are attached as **Exhibit 9**.

**Relief for Finding of Contempt and Imposition of Sanctions**

16. The facts are undeniable. Triumph and Reich have proceeded in total disregard of this Court's authority, the bankruptcy process and the laws of the United States. The contemnors chose this path despite multiple warnings and with full knowledge of the impact of their actions. The fact that Reich is a licensed attorney is an aggravating factor. The Plan Agent seeks an order finding Triumph and Reich in contempt of this Court's Confirmation Order and Plan injunction. The Plan Agent requests an order directing Triumph and Reich to immediately dismiss the Louisiana Action with prejudice. In addition, the Plan Agent seeks compensatory sanctions as well as sanctions to deter Triumph and Reich from similar future conduct.

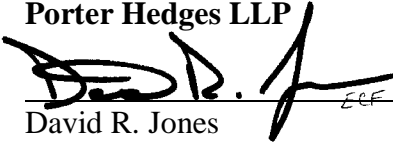
17. Triumph and Reich have willfully engaged in conduct that is in direct violation of the injunctions contained in the Plan and Confirmation Order. This Court has the inherent authority to protect the integrity of the bankruptcy process by the imposition of appropriate sanctions. *In re Rainbow Magazine, Inc.*, 77 F.3d 278 (9th Cir. 1996). The appropriate sanction for Triumph and Reich's conduct is not limited to the harm caused but should be determined with a view toward deterring future conduct. *Pearson v. First NH Mortgage Corp.*, 200 F.3d 30, 42 (1<sup>st</sup> Cir. 1999).

18. The Plan Agent requests that compensatory sanctions be imposed against Triumph and Reich, jointly and severally, in an amount of not less than \$25,000. The Plan

Agent seeks the imposition of coercive sanctions against Triumph and Reich, jointly and severally, in the amount of \$50,000. Should Triumph and/or Reich file an appeal, the Plan Agent seeks a further award of \$25,000 in attorney's fees for an unsuccessful appeal to the United States District Court, an additional \$40,000 for an unsuccessful appeal to the Fifth Circuit and an additional \$50,000 if an application for writ of certiorari is filed with the United States Supreme Court and the writ is denied.

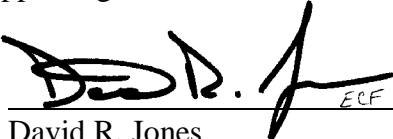
19. Accordingly, the Plan Agent requests that the Court enter an order as set forth above and granting such other relief as is just.

**Dated: March 7, 2011.**

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument shall be duly served (i) by first class mail to all of the parties listed on the attached Service List; and (ii) by electronic transmission to all registered ECF users appearing in this case on March 7, 2011.

 ECF  
David R. Jones

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